

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ENGLISH BOILER & TUBE, INC.,

Plaintiff,

08 Civ. 3605 (JGK) (DFE)

-against-

SCHEDULING ORDER

OPTIMIRA ENERGY, INC.,

Defendant.
-----x

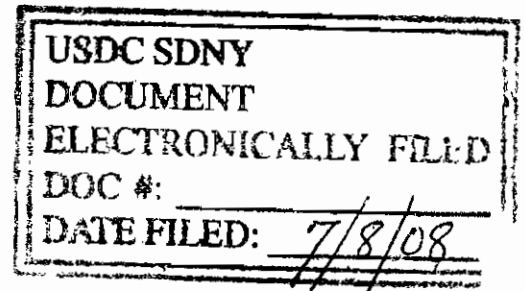
DOUGLAS F. EATON, United States Magistrate Judge.

1. On June 27, 2008, Judge Koeltl granted plaintiff's motion for a default judgment and referred the case to me to conduct an inquest into damages against the defendant. This means that I am to write a Report and Recommendation as to the amount of damages to be awarded against the defendant in favor of the plaintiff (including any claim for reasonable attorneys' fees).

2. I direct the plaintiff to send me an inquest memorandum, accompanied by supporting affidavits and exhibits, setting forth its proof of damages (and to mail copies to the defendant) no later than August 1, 2008. Plaintiff's papers must include an affidavit, from someone with personal knowledge, setting forth facts which establish that this district court has both personal jurisdiction over the defendant, and jurisdiction over the subject matter. With respect to each damage claim, plaintiff must (a) set forth the proper rule for the calculation of damages and (b) set forth facts which support the calculation of an amount of damage with a reasonable degree of certainty. See *Credit Lyonnais Securities (USA), Inc. v. Alcantara*, 183 F.3d 151 (2d Cir. 1999).

3. I direct the defendant to send me any opposing memorandum, affidavits and exhibits (and to mail a copy to plaintiff's attorney John G. McCarthy) within two weeks after receipt of plaintiff's inquest memorandum, and in no event later than August 29, 2008. In these papers, the defendant must state (a) whether it requests a hearing for the purpose of cross-examining plaintiff's witnesses, and (b) whether it requests a hearing for the purpose of calling its own witnesses and, if so, it must state the name and address of each witness.

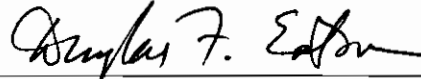
4. If a hearing is requested by any party, then such a hearing will take place at 10:00 a.m. on Friday, September 12,



USDC SDNY
DATE SCANNED 7/8/08 *HE*

2008, in Courtroom 18A at the United States Courthouse at 500 Pearl Street, New York, New York.

5. If no party requests a hearing by August 29, 2008, then I will make my decision solely on the basis of the memoranda and affidavits without oral argument.



DOUGLAS F. EATON
United States Magistrate Judge
500 Pearl Street, Room 1360
New York, New York 10007
Telephone: (212) 805-6175
Fax: (212) 805-6181

Dated: New York, New York
July 7, 2008

Copies of this Scheduling Order were mailed on this date to:

John G. McCarthy, Esq.
Bainton McCarthy LLC
26 Broadway, Suite 2400
New York, NY 10004

Optimira Energy, Inc.
60 East 42nd Street, Suite 3405
New York, NY 10165

Hon. John G. Koeltl